



Preserving America's Heritage

August 3, 2009

Mr. Leslie T. Rogers  
Regional Administrator  
Federal Transit Administration Region IX  
201 Mission St., Suite 1650  
San Francisco, CA 94105-1839

RE: *Honolulu High-Capacity Transit Corridor Project*  
*Honolulu, Hawaii*

Dear Mr. Rogers:

The Advisory Council on Historic Preservation received the Federal Transit Administration's (FTA) notification of adverse effect, submitted in accordance with 36 CFR 800.6(a)(1) of our regulations, "Protection of Historic Properties" (36 CFR Part 800), on July 27, 2009. In response to this notification, ACHP will participate in consultation to develop a Programmatic Agreement (PA) for the proposed Honolulu High-Capacity Transit Corridor Project. Our decision to participate in this consultation is based on the *Criteria for Council Involvement in Reviewing Individual Section 106 Cases*, contained within our regulations. The criteria are met because the proposed undertaking may result in adverse effects to important historic properties, including National Historic Landmarks located within the Area of Potential Effects, and presents issues of concern to Native Hawaiian organizations.

Section 800.6(a)(1)(iii) of our regulations requires that we notify the head of the agency of our decision to participate in consultation. A copy of our letter to the Federal Transit Administrator is enclosed.

ACHP staff participated by teleconference in part of the consultation meeting, held on July 28, 2009, to discuss the draft PA. FTA did not appear to be represented during the portion of the consultation meeting in which our staff participated. Accordingly, we are submitting for your consideration the following observations about the consultation based upon the call and other background information reviewed to date. The regulations specifically require that the federal agency, not the applicant or contractors, participate in the resolution of adverse effects upon notification of the ACHP. Consulting parties have expressed concerns about FTA's involvement at this critical juncture in the Section 106 process. We share their concerns and request involvement and leadership in the review from FTA. As FTA remains responsible for all findings and determinations made in the Section 106 process [§800.2(a)], agency representation is needed to ensure that consulting parties have the opportunity to communicate directly with the federal decision maker as well as the applicant for federal assistance.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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During the call, consulting parties were informed by contractors that the City and County of Honolulu Department of Transportation Services (City) had recently revised some of its effect findings for properties within the Area of Potential Effects (APE), including at least one National Historic Landmark (NHL). If FTA endorses these revised findings, it should circulate this information to all consulting parties so that they may be considered during the consultation process and discussion among consulting parties regarding measures to resolve adverse effects.

Finally, the schedule proposed for finalizing the PA, which is August 4, one week following the call, does not allow adequate time for consulting parties to consider the revised effect findings, proposed revisions to the draft PA made in response to comments received during the July 28 meeting, and any other comments provided by consulting parties and members of the public. Several consulting parties expressed concerns about the extremely compressed timetable during the meeting, and ACHP shares these concerns. We received FTA's adverse effect notification regarding this undertaking on July 27, 2009. To assume that within one week the consultation process would have occurred as defined in §800.16(f) is implausible. Also, to expect other consulting parties to have reviewed the PA and shared it with the organizations that they represent may not be perceived as good faith consultation for an undertaking of this magnitude. FTA should take steps to ensure that all consulting parties have the opportunity to review the comments received on the current version of the draft PA. Further, the revised draft PA incorporating the July 28th comments should be circulated before any additional consultation meetings are scheduled or FTA proceeds to finalize the PA.

FTA and the City may wish to consider an electronic distribution list or the project web site to facilitate the exchange of information among all consulting parties. It is important that all consulting parties have the opportunity to receive information concurrently in the process of developing a PA and to share their comments. The federal agency is responsible for meeting this requirement and ensuring transparency in the conduct of a Section 106 review.

Should FTA staff have questions or concerns about these comments, we would be pleased to participate in a teleconference with FTA and the Hawaii State Historic Preservation Officer (SHPO) to discuss in greater detail how Section 106 consultation could go forward. Such a teleconference would provide an opportunity to plan a reasonable schedule for developing the PA and to clarify how comments on historic preservation concerns received in the Section 106 review process will be handled separately and distinctly from other environmental reviews. ACHP believes that this conversation should take place before FTA convenes any further consultation meetings to discuss the draft PA.

We look forward to assisting the FTA with its responsibilities under the National Historic Preservation Act. If you have any questions, please contact Blythe Semmer by telephone at (202) 606-8552 or by e-mail at [bsemmer@achp.gov](mailto:bsemmer@achp.gov).

Sincerely,



Charlene Dwin Vaughn, AICP  
Assistant Director  
Office of Federal Agency Programs  
Federal Permitting, Licensing, and Assistance Section

enclosure